

37 Am. Jur. 2d Fraud and Deceit § 72

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Fraud and Deceit

George Blum, J.D., John Bourdeau, J.D., Romualdo P. Eclavea, J.D., Janice Holben, J.D., Karl Oakes, J.D. and Eric C. Surette, J.D.

IV. False Representations

B. Necessity that Representation Be of Fact; Opinions

3. Qualifications of, and Exceptions to, Rule Holding Opinions Nonactionable

a. In General

§ 72. Where opinion imports knowledge of supporting facts; opinion stated as fact

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Fraud](#)  11

The mere fact that a statement takes the form of an expression of opinion is not always conclusive, and a statement may be so expressed as to bind the person making it to its truth although stated in the form of an opinion.¹ A statement that is in form mere opinion, or the conclusion of the speaker, may import that the speaker knows that facts exist that support the conclusion² and that the speaker does not know of the existence of facts which, if known, would cast doubt upon it.³ In actions for misrepresentation or deceit, even though a matter asserted is an opinion, it is actionable if the maker is aware of present facts incompatible with that opinion.⁴ Otherwise stated, a statement of opinion may support fraud liability where the speaker has knowledge of facts not warranting the opinion.⁵

When the facts are not equally known to both parties, a statement of opinion by one who knows the facts better often involves a statement of material fact that justifies the opinion such that an action for fraud may be predicated upon the statement.⁶

Observation:

According to the view taken in the Restatement Second, Torts, a statement of opinion as to facts not disclosed and not otherwise known to the recipient may, if it is reasonable to do so, be interpreted by the recipient as an implied statement either that the facts known to the maker are not incompatible with his or her opinion or that he or she knows facts sufficient to justify him or her in forming it. In determining whether a statement of opinion may reasonably be so interpreted, the recipient's belief as to whether the maker has an adverse interest is important.⁷

Where a party states a matter that might otherwise be only an opinion and does not state it as the mere expression of his or her own opinion but as an existing fact material to a transaction so that the other party may reasonably treat it as a fact and rely and act upon it as such, then the statement becomes an affirmation of fact.⁸ However, even where it is held that expressions of opinion may constitute fraudulent representations, it is so held because the person making them believes differently at the time from the way he or she expresses the opinion.⁹

CUMULATIVE SUPPLEMENT

Cases:

For the common-law tort of misrepresentation, a statement of opinion as to facts not disclosed and not otherwise known to the recipient may in some circumstances reasonably be interpreted by him as an implied statement that the speaker knows facts sufficient to justify him in forming the opinion, or that he at least knows no facts incompatible with the opinion. [Restatement \(Second\) of Torts § 539](#). [Omnicare, Inc. v. Laborers Dist. Council Const. Industry Pension Fund](#), 135 S. Ct. 1318 (2015).

[END OF SUPPLEMENT]

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Footnotes

¹ § 69.

² [Arthur D. Little Intern., Inc. v. Dooyang Corp.](#), 928 F. Supp. 1189 (D. Mass. 1996) (applying Massachusetts law); [Grove Holding Corp. v. First Wisconsin Nat. Bank of Sheboygan](#), 12 F. Supp. 2d 885, 41 Fed. R. Serv. 3d 1595 (E.D. Wis. 1998) (applying Wisconsin law; misrepresentation claim); [Commercial Sav. Bank of Carroll, Iowa v. Kietges](#), 206 Iowa 90, 219 N.W. 44 (1928).

³ [Arthur D. Little Intern., Inc. v. Dooyang Corp.](#), 928 F. Supp. 1189 (D. Mass. 1996) (applying Massachusetts law); [Poole v. Camden](#), 79 W. Va. 310, 92 S.E. 454 (1916).

⁴ [McEneaney v. Chestnut Hill Realty Corp.](#), 38 Mass. App. Ct. 573, 650 N.E.2d 93 (1995); [General Star Indem. Co. v. Bankruptcy Estate of Lake Geneva Sugar Shack, Inc. by Waldschmidt](#), 215 Wis. 2d 104, 572 N.W.2d 881 (Ct. App. 1997).

⁵ [People v. Webb](#), 74 Cal. App. 4th 688, 88 Cal. Rptr. 2d 259 (2d Dist. 1999).

⁶ [Thompson v. United Companies Lending Corp.](#), 699 So. 2d 169 (Ala. Civ. App. 1997).
As to relationships which may give rise to trust and confidence so as to permit reliance on a misrepresentation, see §§ 76, 77, 78.

⁷ [Restatement Second, Torts § 539](#).
The Restatement Second, Contracts takes a similar view, stating that if it is reasonable to do so, the recipient of an assertion of a person's opinion as to facts not disclosed and not otherwise known to the recipient may properly interpret it as an assertion: (a) that the facts known to that person are not incompatible with his or her opinion; or (b) that he or she knows facts sufficient to justify him or her in forming it. [Restatement Second, Contracts § 168\(2\)](#).

⁸ [Hale v. Wolfson](#), 276 Cal. App. 2d 285, 81 Cal. Rptr. 23 (1st Dist. 1969); [Bergman and Lefkow Ins. Agency v. Flash Cab Co.](#), 110 Ill. App. 2d 415, 249 N.E.2d 729 (1st Dist. 1969).

⁹ [Automobile Underwriters v. Rich](#), 222 Ind. 384, 53 N.E.2d 775 (1944).

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